BAIL SLIP

The Appellant/Accused 1 namely V.K.Rakesh was directed to be released on bail in and by the order of this Court dated 11.3.1999 in Crl.M.P.No.1566/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2007

CORAM

THE HONOURABLE MR. JUSTICE R.REGUPATHI

Criminal Appeal No.141 of 1999

V.K.Rakesh .. Appellant/1st accused

Vs.

State rep., by the
Inspector of Police,
Palloor Police Station,
Mahe, Pondicherry State. .. Respondent/Complainant

Criminal Appeal filed against the judgment dated 05.02.1999 in S.C.No.27 of 1998 on the file of II Additional Sessions Judge, Pondicherry.

For appellant : Mr.T.Sudanthiram, S.C., for Mr.C.B.Muralikrishnan

For respondent : Mr.M.R.Thangavel, Government Advocate (Pondicherry)

JUDGMENT

The above appeal is preferred by the appellant-first accused against the judgment dated 05.02.1999 in S.C.No.27 of 1998 on the file of II Additional Sessions Judge, Pondicherry.

2. The petitioner is the first accused in the case. Among nine accused, the appellant, on conclusion of trial, was convicted for an offence punishable under Section 3 of the Explosive Substances Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month. He was also convicted for the offence under Section 324 IPC (3

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

counts) and sentenced to undergo rigorous imprisonment for six months under each count and the sentence of imprisonment passed under Section 324 IPC shall run concurrently with the sentence passed under Section 3 of Explosive Substances Act, 1908 and the default sentence shall run consecutively.

3. Accused 2 to 9 were acquitted of the charges framed against them.

4. The case of the prosecution is that PWs 1 to 3 belong to R.S.S. Party and the accused belong to C.P.M. Party. Earlier, one of the CPM party cadre was done to death and on account of political animosity between two groups, on 09.05.1996 at about 7.30 p.m., PWs.1 to 3 while proceeding to a place, where they usually assemble for conducting exercises, the accused emerged out from two cars near the lane leading to the place "Saaga" and alleged to have hurled country bombs and caused explosion, in which Pws.1 to 3 sustained simple injuries, resulting in the registration of the case.

5. The learned counsel for the appellant-A1 submits that the reasons assigned for acquitting A2 to A9 are equally applicable to the appellant herein. While acquitting the accused, the learned trial Judge has given his reasons, which read as follows:

> "The evidence of PWs 1 to 3 do not in any way mention any overt act of A2 to A9. They only state that A2 to A9 were present along with A1 and A1 threw bomb. As pointed out earlier, the presence of A2 to A9 in the cars as spoken to by PWs 1 to 3 cannot be relied upon. More over, PWs 1 to 3 have stated that they identified the accused in the street lamp at the junction of the two lanes (marked as No.4 in the rough sketch Ex.P19 and a part of the wooden lamp post is seen in the photograph). In the evidence, PW16 categorically admits that the light was not burning when he went to the scene of occurrence and he had to use a torch for preparing observation mahazar at it was dark. Moreover, the occurrence happened at 7.30 p.m. During the month of June Sun set at 6.40 p.m., and kin the mountain terrain where there will trees and it would be dark. Therefore, the evidence of PWs 1 to 3 and 4 that A2 to A7 were present along with A1 is highly improbable and cannot be relied upon. Hence, the prosecution has not established that A1 to A7 were present at the time of incident and has actively taken part in the bomb throw or has adduced any evidence for their active involvement in the crime"

6. The learned counsel for the appellant submits that in the FIR it has been stated that A1 to A7 have hurled bomb, resulting in the occurrence. Overt-acts have been attributed uniformly against all the accused and on conclusion of the investigation, the version of the prosecution is also the same. It is again the same while framing of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

charges against all the accused.

7. The appellant happened to be an elected member of the Panchayat and at the time of the trial, PWs 1 to 3 have given evidence as if it is only the appellant, who has hurled the bomb resulting in such injuries. In the evidence it has been positively asserted about the identity of the accused persons at the scene of occurrence. But, their names are not mentioned in the First Information Report. Even before the Medical Officer, who has treated PWs 1 to 3, it has been stated that the accused are unidentified persons. The Investigating Officer, admitted in his evidence that there was no light in the scene of occurrence. The occurrence had taken place at 7.30 p.m. The accused are alleged to have taken a narrow lane with a width of 1 1/2' to reach the place of occurrence and under such circumstances, it is impossible to identify the accused and attribute overt-acts to each of them. In the case on hand, though it is the case of the prosecution that all the accused have hurled bomb, now they have concentrated only on the appellant/A.1 as he happened to be the elected member of the Panchayat.

8. The learned counsel for the appellant has relied on the decision of the Supreme Court reported in 2004 Supreme Court Cases (Criminal) 569 (NARAIN VS. STATE OF MADHYAPRADESH), wherein in paras 8 and 11 it has been observed as follows:

> "8. As a rule of universal application, it cannot be said that when a portion of the prosecution evidence is discarded as unworthy of credence, there cannot be any conviction. It is always open to the court to differentiate between an accused who has been convicted and those who have been acquitted. (See Gurcharan Singh Vs. State of Punjab and Sucha Singh Vs. State of Punjab) The maxim "falsus in uno, falsus in omnibus" is merely a rule of caution. As has been indicated by this Court in Sucha Singh case in terms of felicitous metaphor, an attempt has to be made to separate the grain from the chaff, truth from falsehood. When the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them. But where the position is such that the evidence is totally unreliable, and it will be impossible to separate the truth from falsehood to an extent that they are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, conviction cannot be made.
>
> 11.The genesis of the incident, the place of incident and the manner in which the incident took place was found not to have been established by cogent and credible prosecution evidence. Therefore, on the peculiar facts of the case and the nature of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence tendered by the prosecution there is no scope for taking a different view so far as the appellant is concerned and treat the case against him alone to have been substantiated beyond reasonable doubt. The conclusion arrived at in respect of other accused persons was equally applicable so far as the appellant is concerned."

9. The learned counsel for the appellant has also relied on the decision of this Court reported in 2002 I Law Weekly (Criminal 416 (P.Jothi and two others Vs. State by Inspector of Police etc) especially para 18, wherein it has held as follows:

"The investigating officer has categorically admitted that on account of the election dispute between the two groups, he had not examined any one outside the two factions. In our considered opinion, the Investigating Officer would have done better if he had examined atleast one person, who is totally unconnected with the two groups especially, when the occurrence had taken place in a public road. It may be true that Pws.1, 3, 5, 6 and 7 had consistently stated that A3 and A4, each caught hold of one hand of the deceased and the accused Manimurugan (since deceased) fatally stabbed on the chest and head of the deceased. But in view of several suspicious circumstances starting from the truth of Ex.P1, we evaluated the oral evidence of these witnesses to find out whether they pass the test of reliability. As already stated, we are in entire agreement with the finding of the learned Sessions Judge that the witnesses projected by the prosecution are partisan witnesses and they appear to be very keen to implicate everyone in the opposite camp in the crime. Under these circumstances, caution should be in the mind of the Court, as held by the Apex Court as well as by this Court in so many judgment, while evaluating the evidence of such witnesses. We are unable to remove the chaff from the grain from the evidence of these witnesses. When their evidence had been disbelieved to acquit A1, A2 and A6, we do not find any compelling circumstance or substantial material in their evidence which could be carved out to be used against A3 to A5. The presence of A6 at the scene of occurrence had been rightly doubted by the learned Sessions Judge. In Ex.P1, his name is not found mentioned as an eye witness. If the evidence of PW6 is true, then his clothes would have definitely become bloodstained. When the Investigation Officer had taken much care to recover the blood-stained clothes of PWs 3 and 5, nothing had been recovered from PW6. PW6's evidence is that after his brother was fatally attacked, he put him on his lap and inasmuch as the deceased has sustained profusely bleeding injuries, the clothes of PW6 would not have escaped from becoming blood-stained."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. Per contra, the learned Special Public Prosecutor for Pondicherry submits that though all the accused have been implicated during the course of investigation, the trial Judge, considering the materials available on record and the evidence of PWs 1 to 3, has reached a conclusion to convict the appellant. Though A2 to A9 have been acquitted, the appellant could be convicted based on the available materials through the evidence of PWs 1 to 3.

11. `I have heard the submissions made by both the learned counsel and perused the materials on record.

12. Initially the case has been taken on file against nine accused. Admittedly, all the nine accused belong to CPM party and Pws. 1 to 3 belong to rival party viz., RSS. Animosity between two groups is also an admitted factor. No independent witness has been examined by the prosecution. The occurrence had taken place at 7.30 p.m. during night time. The factum of availability of light at the scene of occurrence has not been mentioned in the First Information Report. On the other hand, it is the admitted case of the Investigating Officer that there was no light at the scene of occurrence at the time of the alleged occurrence. During the course of investigation, the material objects were subjected to Forensic test and the Expert opined in Ex.P.20 is that the samples "do not contain any explosive residues". While acquitting the accused A2 to A9, the trial Judge has given convincing reasons. On perusal of the reasonings, I find that such reasons are equally applicable to the appellant also. The main allegation against the appellant/A.1 is that he hurled bomb at the victims. To substantiate the same, there is no supporting evidence from the Forensic Expert. Though it is alleged that PWs 1 to 3 sustained injuries in the alleged occurrence, even at the earliest point of time, they have intimated to the Medical Officer that the accused are unidentified persons. On the contrary, in their evidence, they have positively stated that the accused especially, the appellant is a known person. I am of the considered view that the evidence of PWs 1 to 3 is partisan and unacceptable. The precedent relied on by the learned counsel for the appellant is equally applicable to the case on hand. In such circumstances, I do not find any reason to sustain the conviction of the appellant-A1 and therefore, the conviction and sentence passed against the appellant is set aside and the appellant-A1 is not found guilty of the offences charged and accordingly, he is acquitted of the offences charged. Accordingly, the appeal is allowed. The bail bonds of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appellant shall stand discharged. The fine amount, if any, paid by the appellant/A.1 shall be refunded to him.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

raa

To
1. The II Additional Sessions Judge,
Pondicherry.

2. -do- through the Prl. Sessions Judge, Pondicherry.

3. The Inspector of Police, Pallore Police Station, Mahe, Pondicherry.

4. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. T.Sudanthiram, Senior Counsel Advocate SR NO.911

+ 1 CC to Public Prosecutor, Pondicherry, SR 421

Crl.A.No.141 of 1999

bv[co]
gp/2.2.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/